



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on August 12, 2022.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on August 31, 2022, the landlords served the tenant the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlords had the tenant and a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm personal service.

Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenant on August 31, 2022.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on February 25, 2021, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on April 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 3, 2022, for \$1,200.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of August 13, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door and served to the tenant in person at 5:45 pm on August 3, 2022
- A copy of a video showing a document being attached to a door
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

I have reviewed all documentary evidence and I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00, as per the tenancy agreement.

I note the special details section of the Proof of Service Notice to End Tenancy form indicates the 10 Day notice was attached to the tenant's door. However, the witness statement section indicates the 10 Day Notice was served to the tenant in person.

The landlords submitted an mp4 file entitled "Video_of_notice_delivery_Aug_3_2022" showing a document being attached to a door. I find it reasonable to conclude from this that the 10 Day Notice was not served to the tenant in person and was in fact attached to the door.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on August 3, 2022 and is deemed to have been received by the tenant on August 6, 2022, three days after its posting.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, August 16, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$1,200.00, the amount claimed by the landlords for unpaid rent owing for August 2022.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$1,300.00 for rent owed for August 2022 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 27, 2022

Residential Tenancy Branch